Word Music, LLC et al v. Priddis Music, Inc. et al Doc. 29

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE, TENNESSEE

WORD MUSIC, LLC, et al.,	)	
	)	
Plaintiffs,	)	**CASE NO. 3:07-cv-0502**
	)	**JUDGE HAYNES**
v.	)	**JURY DEMAND**
	)	
PRIDDIS MUSIC, INC., et al.	)	
	)	
Defendants.	)	

REPLY TO PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PRIDDIS DEFENDANTS' MOTION TO DISMISS

Defendants Priddis Music, Inc., Richard L. Priddis and Prosound Karaoke, Ltd. (hereinafter the "Priddis Defendants"), by and through undersigned counsel, hereby submit this Reply to Plaintiffs' Memorandum of Points and Authorities in Opposition to Priddis Defendants' Motion to Dismiss.

I. ARGUMENT

A. Defendant Mediostream, Inc.'s Suit Meets the First-to-File Requirements.

According to the United States Court of Appeals for the Ninth Circuit, district courts must consider the following threshold factors when deciding whether to apply the first-to-file rule: 1) the chronology of the two actions; 2) the similarity of the parties; and 3) the similarity of the issues. Pacesetter Systems, Inc. v. Medtronic, Inc., 678 F.2d 93, 95 (9th Cir. 1982) (copy attached previously to Motion); Ward v. Follett Corp., 158 F.R.D. 645, 648 (N.D. Cal. 1994) (copy attached previously to Motion)[1].

[1] Concerning the first-to-file rule, the Plaintiffs assert that the Priddis Defendants may not rely on Mediostream's previously filed action, because the Priddis Defendants did not file that action, but the Plaintiffs cite no authority supporting the existence of this additional first-to-file requirement.

Dockets.Justia.com

The Plaintiffs admit that the suit Defendant Mediostream, Inc. (hereinafter "Mediostream") filed in the United States District Court for the Northern District of California, styled as Mediostream, Inc. v. Priddis Music, Inc. and Warner/Chappell Music, Inc., U.S. District Court, Northern District of California, Case Number C07-2127 PDH (hereinafter the "First-Filed Action") satisfies the first-to-file rule's chronology requirement. Contrary to the Plaintiffs' assertions, however, the First-Filed Action satisfies the remaining requirements of the rule, as well.

When comparing the first-filed suit with the later-filed suit, the parties and issues do *not* have to be identical. Plating Resources, Inc. v. UTI Corp., 47 F. Supp 2d 899, 903 (N.D. Ohio 1999). The Sixth Circuit applies the first-to-file rule where there is a "sufficient similarity" between the parties in both actions and where there is a "substantial likelihood of overlap" between the cases. Versus Technology, Inc. v. Hillenbrand Industries, Inc., 2004 U.S. Dist. LEXIS 28331 *8 (W.D. Mich. 2004) (copy attached); Elite Physicians Services, LLC v. CitiCorp Credit Services, Inc., 2007 U.S. Dist. LEXIS 26954 *10 (E.D. Tenn. 2007) (copy attached). Likewise, Federal Practice and Procedure, describing the degree to which the parties and issues must be similar, provides in pertinent part as follows:

> When two actions involving *nearly identical parties* and *closely related . . . infringement questions* are filed in separate districts, which happens with some frequency in contemporary litigation, the general rule is that the case first filed takes priority, and the subsequently filed suit should be dismissed or transferred or stayed.

Wright and Miller, Federal Practice and Procedure, 14D FPP § 3823 (2007 ed.) (emphasis supplied).

Of the sixteen parties involved in this action, the Plaintiffs admit that only four, Defendants D.J. Miller Music Distributors, Inc., Dale S. Miller, Prosound Karaoke, Ltd. and Richard L. Priddis, are not parties in the First-Filed Action. See First-Filed Action. The Plaintiffs' allegations concerning copyrights they claim to own in certain recorded musical works and their allegations concerning the extent to which they have licensed Mediostream and the Priddis Defendants to reproduce and distribute those works are the central issues in both the First-Filed Action and this cause. See Complaint at 1, 15, 16 and 17; See also First-Filed Action at 4, 6, 7, 8 and 9. Further, both suits involve Mediostream's KSUPERSTAR website and whether Mediostream and/or Defendant Priddis Music, Inc. infringed upon the Plaintiffs' alleged copyrights via website activity. See Complaint at 15 and 17; See also First-Filed Action at 7.

Departing from the template which most declaratory actions present, the First-Filed Action seeks much more than a mere declaration of rights or clarification concerning contractual definitions or responsibilities. Specifically, the First-Filed Action seeks, among other things, a determination as to what copyrights *the Priddis Defendants* have in the Plaintiffs' recorded musical works, an issue at the heart of the Complaint. See First-Filed Complaint at 8. While the Plaintiffs assert that the First-Filed Action addresses only past conduct, the resolution of whether the Priddis Defendants have acquired necessary rights concerning the Plaintiffs' copyrighted musical works, will affect undoubtedly the Priddis Defendants' rights relating to those copyrights going forward. Seeking to create disparity between the issues in the First-Filed Complaint and the Complaint, the Plaintiffs point out that the Complaint seeks injunctive relief. However, any hearing concerning awarding such extraordinary relief to the Plaintiffs will raise the issue of whether the Priddis Defendants and/or Mediostream have acquired the necessary rights in the Plaintiffs' copyrighted musical works - an issue raised initially in the First-Filed Action.

Additionally, the First-Filed Action seeks a determination concerning what copyrights belonging to the Plaintiffs, if any, Mediostream and/or the Priddis Defendants have infringed upon and, significantly, the First-Filed Action seeks also a determination of the Plaintiffs' damages arising from any such infringement. See First-Filed Action at 8. In the Complaint, the Plaintiffs seek statutory damages arising from willful copyright infringement, but the First-Filed Action seeks a declaration that Mediostream's infringement, if any, "was innocent and in ignorance of [the Plaintiffs'] rights and was the direct and proximate result of [sic] misinformation provided by [the Priddis Defendants] . . . ." See First-Filed Action at 8. As the Plaintiffs admit, Mediostream seeks also, in a separate claim for relief contained in the First-Filed Action, indemnification from the Priddis Defendants, should the court determine that the Priddis Defendants proximately caused damages to the Plaintiffs via copyright infringement. See First-Filed Complaint at 10.

In sum, not only does the First-Filed Action satisfy the chronology prong of the first-to-file rule test, but the First-Filed Action and this action share sufficiently similar parties and a substantial likelihood of overlap of issues such that the rule applies.

B. "Anticipatory" Filings and the First-to-File Rule

According to the United States Court of Appeals for the Federal Circuit, a district court may not deviate from the first-to-file presumption solely because the first-filed claim was anticipatory of the later-filed claim. Electronics for Imaging, Inc. v. Coyle, 394 F.3d 1341, 1347-1348 (C.A. Fed. 2005) (copy attached previously to Motion). While the Plaintiffs rely heavily on the United States Court of Appeals for the Sixth Circuit's decision in AmSouth Bank v. Dale, that case stands for the proposition that a party who brings a declaratory action in bad faith strictly to obtain a procedural advantage, rather than to resolve issues of liability, may not avail himself of the first-to-file presumption. AmSouth Bank v. Dale, 386 F.3d 763, 790 (6th Cir. 2004); See also Dale v. First American National Bank, 395 F.Supp.2d 451, 453 (S.D. Miss. 2005) (copy attached) (discussing that the Sixth Circuit in AmSouth chose not to follow the first-to-file rule, because the declaratory action's purpose was not to resolve issues of liability, but to gain procedural advantage.)

In Intellapex v. Intel Corp., the United States District Court for the Western District of Michigan, Southern Division, distinguished AmSouth, holding that a request to dismiss a first-filed declaratory judgment action (in a trademark infringement case) "flies in the face of the customary 'first to file' rule, which is the law of the Sixth and Ninth Circuit Court of Appeal." Intellapex v. Intel Corp., 2005 U.S. Dist. LEXIS 21276, * 3 (W.D. Mich. 2005) (copy attached). The Intellapex court cited Electronics for Imaging, Inc., noting that the "'anticipatory nature' of the first suit is not a reason to depart from the first-to-file rule."[2] Intellapex v. Intel Corp., 2005 U.S. Dist. LEXIS 21276, * 3. The Intellapex court took this position despite the fact that the second-filed action "included additional claims not considered as part of Plaintiff's declaratory action. . . ." Intellapex v. Intel Corp., 2005 U.S. Dist. LEXIS 21276, * 3.

---

[2] The Intellapex court noted also that oral argument was "unnecessary" to resolve the Motion to Dismiss or Transfer. Intellapex v. Intel Corp., 2005 U.S. Dist. LEXIS 21276, * 1.

The facts in the Intellapex case are very similar to the present action, in that counsel for Intel Corporation sent a demand letter to Intellapex before the dispute arose, advising it of Intel Corporation's rights in a certain trademark and demanding that Intellapex cease and desist using the mark. Intellapex v. Intel Corp., 2005 U.S. Dist. LEXIS 21276, * 2. In response, the parties conducted a telephone conference, but failed to resolve their differences, and Intellapex filed its declaratory judgment action the next day, June 10, 2005. Intellapex v. Intel Corp., 2005 U.S. Dist. LEXIS 21276, * 2. Soon thereafter, on July 5, 2005, Intel Corporation filed an infringement action in a different federal district court. Intellapex v. Intel Corp., 2005 U.S. Dist. LEXIS 21276, * 2. After pointing out that the AmSouth court based its decision to disregard the first-to-file rule on the "bad faith" and "procedural fencing" of the filer of the declaratory action, the Intellapex court held in pertinent part as follows:

> The facts of the AmSouth Bank case do not trek with this one. In the present case, there was no exercise of "bad faith" by Plaintiff in the filing of this [declaratory] suit, nor "procedural fencing" as described in the AmSouth case. This suit was prompted by Defendant's letter . . . . Defendant's letter itself essentially promised suit if Plaintiff did not concede. *While a "race to the courthouse" is not always a desired outcome, the first-to-file rule, which is widely followed, generally favors the first suit. In this case, the bulk of the disagreements lodged in Defendant's letter and its California suit will be answered by the resolution of this declaratory action, which is a valid and useful suit. Further, Defendant is free to assert its additional . . . claims as part of counter-claims in [the declaratory action].*

Intellapex v. Intel Corp., 2005 U.S. Dist. LEXIS 21276, * 4, 5 (emphasis supplied)[3]. The Intellapex court pointed out that, prior to the filing of the declaratory action, the parties

[3] In McKee Foods Kingman and McKee Foods Corporation v. Kellogg Company, the United States District Court for the Eastern District of Tennessee denied a motion to dismiss a first-filed declaratory action, because the plaintiff did not file that suit "merely for the purpose of procedural fencing or to provide an arena for a race for res judicata." McKee Foods Kingman and McKee Foods Corporation v. Kellogg

"had ascertained that a legal dispute was alive . . . ." Intellapex v. Intel Corp., 2005 U.S. Dist. LEXIS 21276, * 4.

According to counsel for the Plaintiffs, he asked counsel for Mediostream if he was authorized to accept service on behalf of Mediostream, and counsel for Mediostream responded that he "would have to check with his client" and, a few days later, Mediostream filed the First-Filed Action. See Stacey Declaration at 5. Counsel for Mediostream, however, represents that, prior to the First-Filed Action, counsel for the Plaintiffs had threatened repeatedly to bring suit for copyright infringement, but had not done so. See First-Filed Action at 8. Counsel for Mediostream represents further that he filed the First-Filed Action and served a copy on counsel for the Plaintiffs after counsel for the Plaintiffs advised he was authorized to accept service of the First-Filed Action. See First-Filed Action at 4.

Additionally, counsel for the Plaintiffs asserts that the First-Filed Action, before its amendment, named Warner/Chappell Music, Inc. (hereinafter "WCM") as the owner of the copyrights at issue, and asserts that WCM, however, does not own any of the copyrights which are the subject of this action. See Stacey Declaration at 6. Counsel for Mediostream explains to the contrary that he named WCM as the initial defendant in the First-Filed Action because counsel for the Plaintiffs claimed at that time that WCM did, in fact, own the applicable copyrights. See First-Filed Action at 4. If bad faith exists on the part of any of the parties, it appears to be on the side of the Plaintiffs who not only failed to timely identify themselves as the holders of the copyrights at issue, but also admittedly "directed" Dorothy Gibby, a paralegal with the Plaintiffs' local counsel's

---

Company, 474 F. Supp. 2d 934, 941 (E.D. Tenn. 2006) (internal quotes removed). The McKee Foods court also noted the useful purpose the declaratory action would serve. Id.

office, "to attempt to purchase copies of the infringing recordings manufactured by Priddis and Prosound via the Priddis and Prosing interactive, internet websites" in order to bolster an argument, among other things, concerning the court's jurisdiction over the Priddis Defendants. See Stacey Declaration at 4.

In sum, the Plaintiffs fail to illustrate that the First-Filed Action was filed in bad-faith or merely to gain a procedural advantage, fail to illustrate that the First-Filed Action does not seek to resolve legitimate issues of liability and fail to explain why they cannot bring their additional claims or join additional parties in the First-Filed Action.

C. The Court May Dismiss, Transfer or Stay This Action.

In Alltrade, Inc. v. Uniweld Products, Inc., the United States Court of Appeals for the Ninth Circuit reviewed the district court's decision to dismiss a second-filed complaint, finding that "the district court's decision to apply the first-to-file rule was not an abuse of discretion"[4]. Alltrade, Inc. v. Uniweld Products, Inc., 946 F.2d 622, 629 (9th Cir. 1991) (copy attached). More particularly, the Alltrade court held in pertinent part as follows concerning the district court's treatment of the second-filed suit under the rule:

> The cases cited by appellant are cases in which exceptions to the rule have been allowed; they stand for the proposition that district court judges can, in the exercise of their discretion, dispense with the first-filed principle for reasons of equity. *But it is not an abuse of discretion, and therefore not reversible error, for a district court to weigh the facts and conclude that the rule should apply.* The decision and the discretion belong to the district court.

Alltrade, Inc. v. Uniweld Products, Inc., 946 F.2d at 628 (emphasis supplied). Interestingly, while the Alltrade court found that the district court did not abuse its discretion in dismissing the second-filed complaint, the court reversed the decision in

[4] See also Pacesetter Systems, Inc. v. Medtronic, Inc., 678 F.2d at 95 (affirming dismissal of second-filed complaint).

favor of a stay, because of pending motions and other unresolved issues[5]. Alltrade, Inc. v. Uniweld Products, Inc., 946 F.2d at 629. Also, the United States District Court for the Eastern District of Tennessee, in Elite Physicians Services, LLC v. Citicorp Credit Services, Inc., explained that "second-filed courts generally grant a stay . . . for one of two reasons: (1) if dismissal or transfer would jeopardize the rights of one of the parties or (2) to give the first-filed court time to consider if the first-to-file rule applies." Elite Physicians Services, LLC v. CitiCorp Credit Services, Inc., 2007 U.S. Dist. LEXIS 26954 at *13.

Courts may transfer the second-filed action "when dealing with substantive matters." Elite Physicians Services, LLC v. CitiCorp Credit Services, Inc., 2007 U.S. Dist. LEXIS 26954 at *13 (transferring the second-filed suit, among other reasons, "in the interests of convenience, justice, and judicial efficiency."). In Versus Technology, Inc. v. Hillenbrand Industries, Inc., the United States District Court for the Western District of Michigan, noting the "substantial likelihood of overlap between the cases," transferred a pending action to the United States District Court for the Middle District of North Carolina for consolidation with a first-filed complaint. Versus Technology, Inc. v. Hillenbrand Industries, Inc., 2004 U.S. Dist. LEXIS 28331 *9. Additionally, the Sixth Circuit considers the following factors when deciding whether to transfer a case: 1) the convenience of the parties; 2) the convenience of the witnesses; 3) the relative ease of access to sources of proof; 4) the availability of process to compel attendance of unwilling witnesses; 6) the practical problems associated with trying the case most expeditiously and inexpensively; and 7) the interest of justice. Brink v. Ecologic et al.,

[5] The Plaintiffs assert that they will file a Motion to Dismiss the First-Filed Action, but no such Motion is pending.

987 F. Supp. 958, 966 (E.D. Mich. 1997); See also Helder v. Hitachi Power Tools, Ltd., 764 F.Supp 93, 96 (E.D. Mich. 1991).

The Plaintiffs assert that venue is proper in the Middle District of Tennessee, despite the fact that none of the Defendants reside in Tennessee. See Complaint at 20. In addition, forcing the Priddis Defendants' to litigate this dispute in the Middle District of Tennessee would be unreasonable, costly, unfair and oppressive, considering especially that the Priddis Defendants consist of residents of the United Kingdom, Nevada and Utah. See Complaint. The remaining Defendants reside in California and Colorado. See Complaint at 17, 18 and 19. The vast majority of persons with knowledge of the Priddis Defendants' business operations, recording techniques, licensing practices, and sales and marketing activities are located hundreds of miles outside the Middle District of Tennessee, and the cost and inconvenience of bringing these individuals into this forum would be unduly burdensome.

Therefore, should the Court decline to dismiss this action, the Priddis Defendants alternatively request that the Court transfer this action, consolidating it with the First-Filed Action[6].

D. "Internet" Personal Jurisdiction and the Priddis Defendants

The Plaintiffs assert that "the United States Court of Appeals for the Sixth Circuit, as well as every reported District Court decision to date, has held that the operation of an interactive internet website is sufficient to meet the constitutional minimum contacts requirements for jurisdictional and venue purposes." However, the federal courts have not made such a sweeping, broad determination. The analysis begins with general jurisdiction arising from internet contact with the forum, and the Sixth Circuit has held in pertinent part as follows concerning this issue:

---

[6] The Priddis Defendants relied upon and cited in their Motion 28 U.S.C. § 1406(a), which allows the Court to transfer an action to the appropriate venue in the interest of justice.

> When the defendant's alleged contact with the forum state occurs via the internet, the plaintiff faces an initial hurdle in showing where this internet conduct took place for jurisdictional purposes. We have held that the operation of "a website that is accessible to anyone over the Internet is insufficient to justify general jurisdiction," *even where the website enables the defendant to do business with residents of the forum state*, because such activity does not approximate physical presence within the state's borders.

The Cadle Company v. Schlichtmann, 123 Fed. Appx. 675, 677 (6th Cir. 2005) (quoting Bird v. Parsons, 289 F.3d 865, 874 (6th Cir. 2002)) (emphasis supplied). In addition, the Sixth Circuit has held that general jurisdiction exists over a defendant when his contacts with the forum state are of such a continuous and systematic nature that the state may exercise personal jurisdiction over him even where the action is unrelated to the defendant's contacts with the forum. Bird v. Parsons, 289 F.3d at 873.

The Cadle Company court explained that the exercise of specific jurisdiction over a website owner depends on the degree to which the website interacts with the residents of the forum state. The Cadle Company v. Schlichtmann, 123 Fed. Appx. at 678. According to the Sixth Circuit, the "operation of an Internet website can constitute the purposeful availment of the privilege of acting in a forum state . . . if the website is interactive to a degree that reveals specifically intended interaction with residents of the state." Bird v. Parsons, 289 F.3d at 874; See also Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.Supp. 1119, 1124 (W.D. Pa. 1997).

The United States District Court for the Western District of Pennsylvania's opinion in Zippo Mfg. Co. v. Zippo Dot Com, Inc. sets forth this "sliding scale" approach to purposeful availment via interactive internet websites and stands as the leading federal decision on the subject. Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.Supp. at 1119; Neogen Corp. v. Neo Gen Screening, Inc., 282 F.3d at 890. In Zippo, the district court held that the website owner manifested its purposeful availment of the privilege of doing business in Pennsylvania when it "repeatedly and consciously chose to process Pennsylvania residents' applications and to assign them passwords," which would lead to a continued ongoing relationship with these residents through services performed via the regular transmission of electronic messages. Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.Supp. at 1126. The Zippo court drew a distinction between internet websites where the defendant establishes repeated online contacts with residents of the forum state, and those which are "passive," whereby the defendant merely posts information. Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.Supp. at 1124.

In Neogen Corporation v. Neo Gen Screening, Inc., the United States Court of Appeals for the Sixth Circuit considered the Zippo factor of "specifically intended interaction with residents of the state," and found that the owner of an interactive internet website had subjected itself to jurisdiction in Michigan largely because the owner held itself out on the website as "welcoming Michigan business," and the website incorporated (and held itself out as utilizing) geographical data and information concerning Michigan residents. Neogen Corp. v. Neo Gen Screening, Inc., 282 F.3d 883, 891 (6th Cir. 2002). Due seemingly to these direct, deliberate and overt connections between the website and the forum state, the Neogen court held that the Zippo sliding scale balanced in favor of exercising jurisdiction over the defendant. Neogen Corp. v. Neo Gen Screening, Inc., 282 F.3d at 891.

Regardless of the applicability of a state's long-arm statute to a defendant's acts or omissions, courts in the Sixth Circuit must determine that exercising "internet jurisdiction" over an out-of-state defendant comports with the due process requirements set forth in Southern Machine Co. v. Mohasco Industries, Inc., where the United States Court of Appeals for the Sixth Circuit held that a court must establish the existence of the following three criteria before exercising such jurisdiction: 1) purposeful availment of the privilege of acting in the forum state; 2) the cause of action must arise from the defendant's activities there; and 3) the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over him reasonable. Southern Machine Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381-382 (6th Cir. 1968).

Concerning whether a defendant has "purposefully availed" himself of the forum state by entering into a contract with a resident of the forum, the United States Court of Appeals for the Sixth Circuit has held that the existence of a contract with a resident of the forum, by itself, is *not* a sufficient basis for a court to exercise jurisdiction over a defendant. Lanier v. American Bd. of Endodontics, 843 F.2d 901, 910 (6th Cir. 1988); Kerry Steel, Inc. v. Paragon Indus., Inc., 106 F.3d 147, 151 (6th Cir. 1997). Additionally, the United States Supreme Court has held in pertinent part as follows concerning establishing jurisdiction over a defendant via his entering a contract with a forum resident: "[P]rior negotiations, contemplated future consequences, the terms of the contract, and the actual course of dealing need be addressed to evaluate, in a highly realistic way, the intended future consequences that are the real object of the business transaction." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985).

The Plaintiffs fail to establish that the Priddis Defendants maintain continuous and systematic contacts aimed specifically at and reaching out to the residents of the Middle District of Tennessee. To the contrary, the Plaintiffs admit that *they* reached out to the Priddis Defendants by "directing" a paralegal to make internet purchases from the Priddis Defendants' website. See Stacey Declaration at 4. These purchases, as described by the exhibits to the paralegal's affidavit, fail to illustrate a substantial enough connection with this forum to make the exercise of jurisdiction reasonable, and these purchases - made by a sole individual who is not a true customer of the Priddis Defendants, nor seeking to be - fail to establish that the Priddis Defendants tailored any activity via the internet directly at the Middle District, as opposed to any other forum. See Gibby Declaration and Exhibits A and B attached thereto. Even if the paralegal were a true customer of the Priddis Defendants, the collateral materials accompanying the paralegal's purchases (consisting mainly of product labeling and packaging) speak for themselves and do not hold the products out as having been designed specifically for residents of this forum. See Gibby Declaration and Exhibits A and B attached thereto.

Moreover, the Plaintiffs fail to illustrate any specific features of the Priddis Defendants' internet website which would demonstrate with reasonable particularity that the Priddis Defendants have targeted specifically the residents of this forum and sought to establish ongoing and continuous relationships with residents in the Middle District of Tennessee. The Plaintiffs merely attach, as a part of their collective exhibits to their paralegal's affidavit, generic registration cards whereby a purchaser can register his or her new purchases, but such registration cards (along with the other exhibits), however, fail to demonstrate how the Priddis Defendants have operated their internet website in such a way as to aim activity uniquely at the Middle District. Overall, the Plaintiffs have failed to carry their burden of providing the Court with information necessary to employ the Zippo sliding scale relating to website jurisdiction.

II. CONCLUSION

Based on the foregoing, the Priddis Defendants respectfully request that this Court grant their Motion to Dismiss the Complaint or, in the alternative, transfer this action to the Northern District of California.

Respectfully submitted,

s/ Jeff T. Goodson
Jeff T. Goodson
Law Office of John Cobb Rochford, PLLC
2200 Abbott Martin Road, # 201
Nashville, TN 37215
(615) 269-7676

Attorney for the Priddis Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served by electronic means via the Court's ECF system upon the following:

1. Timothy L. Warnock, Bowen, Riley, Warnock & Jacobson, PLC, 1906 West End Avenue, Nashville, TN 37203; and
2. Paul Harrison Stacey, Law Offices of Paul Harrison Stacey, P.C., 7225 N. Spring Gulch Road, P.O. Box 4157, Jackson, WY 83001

and by United States Mail upon the following:

1. Frear Stephen Schmid, 177 Post Street, Suite 890, San Francisco, CA 94108; and
2. Owen Borum, Caplan and Earnest LLC, One Boulder Plaza, 1800 Broadway, Suite 200, Boulder, CO 80302-6737

on this the 27th day of June, 2007.

s/ Jeff T. Goodson
Jeff T. Goodson